

**ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE**

March 17, 2022

3:39 p.m.

DRAFT

MEMBERS PRESENT

Senator Mike Shower, Chair
Senator Lora Reinbold, Vice Chair
Senator Mia Costello
Senator Roger Holland
Senator Scott Kawasaki

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 187(STA)

"An Act relating to the elimination or modification of state agency publications that are outdated, duplicative, or excessive or that could be improved or consolidated with other publications or exclusively delivered electronically; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 207

"An Act restricting the release of certain records of convictions; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 214

"An Act relating to civil liability for censorship of speech by a social media platform."

- HEARD & HELD

HOUSE BILL NO. 123

"An Act providing for state recognition of federally recognized tribes; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 129

"An Act relating to information on judicial officers provided in election pamphlets."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 187

SHORT TITLE: STATE AGENCY PUBLICATIONS

SPONSOR(S): REPRESENTATIVE(S) KAUFMAN

04/22/21	(H)	READ THE FIRST TIME - REFERRALS
04/22/21	(H)	STA, FIN
04/29/21	(H)	STA AT 3:00 PM GRUENBERG 120
04/29/21	(H)	<Bill Hearing Canceled>
05/06/21	(H)	STA AT 3:00 PM GRUENBERG 120
05/06/21	(H)	Heard & Held
05/06/21	(H)	MINUTE(STA)
05/11/21	(H)	STA AT 3:00 PM GRUENBERG 120
05/11/21	(H)	-- MEETING CANCELED --
05/13/21	(H)	STA AT 3:00 PM GRUENBERG 120
05/13/21	(H)	Heard & Held
05/13/21	(H)	MINUTE(STA)
05/15/21	(H)	STA AT 10:00 AM GRUENBERG 120
05/15/21	(H)	Moved CSHB 187(STA) Out of Committee
05/15/21	(H)	MINUTE(STA)
05/18/21	(H)	STA RPT CS(STA) 5DP 1NR
05/18/21	(H)	DP: STORY, VANCE, KAUFMAN, TARR, KREISS-TOMKINS
05/18/21	(H)	NR: CLAMAN
02/02/22	(H)	FIN AT 1:30 PM ADAMS 519
02/02/22	(H)	Heard & Held
02/02/22	(H)	MINUTE(FIN)
02/10/22	(H)	FIN AT 1:30 PM ADAMS 519
02/10/22	(H)	Moved CSHB 187(STA) Out of Committee
02/10/22	(H)	MINUTE(FIN)
02/11/22	(H)	FIN RPT CS(STA) 6DP 5NR
02/11/22	(H)	DP: LEBON, CARPENTER, THOMPSON, JOHNSON, RASMUSSEN, FOSTER
02/11/22	(H)	NR: ORTIZ, EDGMON, WOOL, JOSEPHSON, MERRICK
02/17/22	(H)	TRANSMITTED TO (S)
02/17/22	(H)	VERSION: CSHB 187(STA)
02/22/22	(S)	READ THE FIRST TIME - REFERRALS
02/22/22	(S)	STA

03/10/22 (S) STA AT 3:30 PM BUTROVICH 205
03/10/22 (S) -- MEETING CANCELED --
03/17/22 (S) STA AT 3:30 PM BUTROVICH 205

BILL: SB 207

SHORT TITLE: ACCESS TO MARIJUANA CONVICTION RECORDS

SPONSOR(s): SENATOR(s) SHOWER

02/22/22 (S) READ THE FIRST TIME - REFERRALS
02/22/22 (S) STA, JUD
03/10/22 (S) STA AT 3:30 PM BUTROVICH 205
03/10/22 (S) -- MEETING CANCELED --
03/17/22 (S) STA AT 3:30 PM BUTROVICH 205

BILL: SB 214

SHORT TITLE: LIABILITY: SOCIAL MEDIA CENSORSHIP

SPONSOR(s): SENATOR(s) REINBOLD

02/22/22 (S) READ THE FIRST TIME - REFERRALS
02/22/22 (S) STA, JUD
03/10/22 (S) STA AT 3:30 PM BUTROVICH 205
03/10/22 (S) -- MEETING CANCELED --
03/17/22 (S) STA AT 3:30 PM BUTROVICH 205

BILL: HB 123

SHORT TITLE: STATE RECOGNITION OF TRIBES

SPONSOR(s): REPRESENTATIVE(s) ZULKOSKY

03/03/21 (H) READ THE FIRST TIME - REFERRALS
03/03/21 (H) TRB, STA
03/30/21 (H) TRB AT 8:00 AM DAVIS 106
03/30/21 (H) Heard & Held
03/30/21 (H) MINUTE(TRB)
04/01/21 (H) TRB AT 8:00 AM DAVIS 106
04/01/21 (H) Moved HB 123 Out of Committee
04/01/21 (H) MINUTE(TRB)
04/05/21 (H) TRB RPT 3DP 1NR
04/05/21 (H) DP: FIELDS, TARR, ZULKOSKY
04/05/21 (H) NR: CRONK
04/17/21 (H) STA AT 3:00 PM GRUENBERG 120
04/17/21 (H) Heard & Held
04/17/21 (H) MINUTE(STA)
04/22/21 (H) STA AT 3:00 PM GRUENBERG 120
04/22/21 (H) Moved HB 123 Out of Committee
04/22/21 (H) MINUTE(STA)
04/26/21 (H) STA RPT 5DP 1NR

04/26/21	(H)	DP: VANCE, CLAMAN, STORY, TARR, KREISS-TOMKINS
04/26/21	(H)	NR: KAUFMAN
05/19/21	(H)	LIMIT ALL DEBATE TO 2 MIN EACH Y23 N16 E1
05/19/21	(H)	MOTION TO TABLE UC
05/19/21	(H)	TAKEN FROM TABLE UC
05/19/21	(H)	TRANSMITTED TO (S)
05/19/21	(H)	VERSION: HB 123
01/18/22	(S)	READ THE FIRST TIME - REFERRALS
01/18/22	(S)	STA, CRA
02/10/22	(S)	STA AT 3:30 PM BUTROVICH 205
02/10/22	(S)	Heard & Held
02/10/22	(S)	MINUTE(STA)
02/15/22	(S)	CRA REFERRAL REMOVED
02/15/22	(S)	STA AT 3:30 PM BUTROVICH 205
02/15/22	(S)	Heard & Held
02/15/22	(S)	MINUTE(STA)
03/03/22	(S)	STA AT 3:30 PM BUTROVICH 205
03/03/22	(S)	<Bill Hearing Canceled>
03/10/22	(S)	STA AT 3:30 PM BUTROVICH 205
03/10/22	(S)	-- MEETING CANCELED --
03/17/22	(S)	STA AT 3:30 PM BUTROVICH 205

BILL: SB 129

SHORT TITLE: ELECTION PAMPHLET INFORMATION RE: JUDGES
SPONSOR(s): SENATOR(s) MYERS

04/21/21	(S)	READ THE FIRST TIME - REFERRALS
04/21/21	(S)	JUD, STA
05/05/21	(S)	JUD AT 1:30 PM BUTROVICH 205
05/05/21	(S)	Heard & Held
05/05/21	(S)	MINUTE(JUD)
05/12/21	(S)	JUD AT 1:30 PM BUTROVICH 205
05/12/21	(S)	Scheduled but Not Heard
05/14/21	(S)	JUD AT 1:30 PM BUTROVICH 205
05/14/21	(S)	-- MEETING CANCELED --
01/28/22	(S)	JUD AT 1:30 PM BUTROVICH 205
01/28/22	(S)	Heard & Held
01/28/22	(S)	MINUTE(JUD)
01/31/22	(S)	JUD AT 1:30 PM BUTROVICH 205
01/31/22	(S)	Scheduled but Not Heard
02/02/22	(S)	JUD AT 1:30 PM BUTROVICH 205
02/02/22	(S)	Heard & Held
02/02/22	(S)	MINUTE(JUD)
02/09/22	(S)	JUD AT 1:30 PM BUTROVICH 205
02/09/22	(S)	Heard & Held

02/09/22	(S)	MINUTE (JUD)
02/11/22	(S)	JUD AT 1:30 PM BUTROVICH 205
02/11/22	(S)	Moved CSSB 129 (JUD) Out of Committee
02/11/22	(S)	MINUTE (JUD)
02/15/22	(S)	JUD RPT CS 1DP 2NR 1AM NEW TITLE
02/15/22	(S)	DP: HOLLAND
02/15/22	(S)	NR: SHOWER, KIEHL
02/15/22	(S)	AM: HUGHES
03/10/22	(S)	STA AT 3:30 PM BUTROVICH 205
03/10/22	(S)	-- MEETING CANCELED --
03/17/22	(S)	STA AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

REPRESENTATIVE JAMES KAUFMAN
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 187.

MATTHEW HARVEY, Staff
Representative James Kaufman
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented the sectional analysis for HB 187.

NANCY MEADE, General Counsel
Alaska Court System
Juneau, Alaska

POSITION STATEMENT: Answered legal questions during the hearing on SB 207.

NOAH KLEIN, Legislative Counsel
Legal Services
Division of Legal and Research Services
Legislative Affairs Agency
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions as the legal drafter during the hearing on SB 214.

CAMERON SHOLTY, Director of Government Relations
Heartland Institute
Illinois

POSITION STATEMENT: Testified by invitation in support of SB 214.

LAURA WOLFF, Assistant Attorney General

Opinions, Appeals, and Ethics Section
Civil Division
Department of Law
Anchorage, Alaska

POSITION STATEMENT: Provided the Department of Law's assessment and conclusion that the text of HB 123 does not impact the powers or authorities of tribes or the state.

BETTY JO MOORE, representing self
Sitka, Alaska

POSITION STATEMENT: Testified in opposition to HB 123.

JULIE KITKA, President
Alaska Federation of Natives
Anchorage, Alaska

POSITION STATEMENT: Provided testimony in support of HB 123.

SENATOR ROBERT MEYERS
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of SB 129.

THERESA WOLDSTAD, Staff
Senator Robert Myers
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Delivered a PowerPoint on SB 129 on behalf of the sponsor.

ACTION NARRATIVE

[3:39:45 PM](#)

CHAIR MIKE SHOWER called the Senate State Affairs Standing Committee meeting to order at 3:39 p.m. Present at the call to order were Senators Holland, Reinbold, Costello, Kawasaki, and Chair Shower.

HB 187-STATE AGENCY PUBLICATIONS

[3:40:38 PM](#)

CHAIR SHOWER announced the consideration of CS FOR HOUSE BILL NO. 187(STA) "An Act relating to the elimination or modification of state agency publications that are outdated, duplicative, or excessive or that could be improved or consolidated with other publications or exclusively delivered electronically; and providing for an effective date."

[This is the first hearing and invited and public testimony are noticed.]

3:40:55 PM

REPRESENTATIVE JAMES KAUFMAN, Alaska State Legislature, Juneau, Alaska, sponsor of HB 187, introduced the legislation, paraphrasing the sponsor statement that read as follows:

[Original punctuation provided.]

HB 187 in its current form, is intended to conserve resources expended in the production, processing, transportation, distribution storage and disposal of excess state agency publications.

The products affected by HB 187 are publications as defined in AS 44.99.240.

As currently written in statute, AS 44.99.220 requires state agencies to compile and maintain a list of the publications that they produce each fiscal year. This bill would ensure that the state is receiving added value from work that is already being done, by using the list as opportunity to assess the actual need for each document and to determine if the people of Alaska will be best served by printing or by digital delivery.

HB 187 also provides for the reduction in statutory requirements to produce publications, through changes made to AS 37.07.220. These changes will require that the governor submit a bill to eliminate or modify requirements for publications deemed to be outdated, duplicative or excessive, or could be consolidated with other publications, and which of those could be delivered in electronic form.

Time, energy, space and materials can be all be conserved by the passage of HB 187.

3:43:12 PM

SENATOR COSTELLO voiced support for the legislation. She asked if the purpose behind identifying outdated or duplicative documents is to later remove the requirement for those documents from statute.

REPRESENTATIVE KAUFMAN replied it's a feedback loop that will identify what needs to be changed in statute to effect the desired change.

SENATOR COSTELLO asked whether the list would have hot links to facilitate the search for a particular report.

REPRESENTATIVE KAUFMAN replied there isn't that explicit requirement, "but that would be a good delivery mechanism."

[3:45:19 PM](#)

SENATOR KAWASAKI asked whether the legislature would still have the option of receiving an agency publication that was identified and appeared on the list.

REPRESENTATIVE KAUFMAN answered correct. The idea is to use the legislative processes to eliminate or modify the requirement to produce the publication.

SENATOR KAWASAKI referenced the document in the bill packet from Legislative Research Services that identifies the reports that state agencies are required by statute to produce. He said some are very important and he wouldn't want somebody to decide it wasn't important for the legislature or public to see them. He asked whether there were any guarantees that the public would be able to speak for or against a bill that proposes to eliminate a particular report. He cited the example of the report from the [State Vaccine Assessment Council], which is charged by statute to produce an annual report.

REPRESENTATIVE KAUFMAN said any bill to eliminate publication of a report would first need to go through the full legislative process that includes public hearings. He also pointed out that the bill provides the option to consolidate certain reports and perhaps deliver it electronically. The idea is to use the two year review cycle to do a better job of managing the production of reports in hard copy.

SENATOR KAWASAKI offered his belief that if the bill were to pass, a subsequent legislature likely would introduce an omnibus bill and members would decide on the disposition of the individual reports going forward.

[3:48:04 PM](#)

CHAIR SHOWER asked the sponsor if he was comfortable with the changes that were made to the bill thus far and if it still accomplished the original intent.

REPRESENTATIVE KAUFMAN replied he was very satisfied and believes the changes made a better bill.

SENATOR COSTELLO asked if the list that each of the 14 agencies prepare could be combined and submitted to the legislature as one list.

REPRESENTATIVE KAUFMAN replied the current requirement is for each agency to maintain a list of the publications it produces and HB 187 does not propose to change that construct. However, there is nothing to prevent those lists from being delivered to the legislature as a compilation.

CHAIR SHOWER requested the sectional analysis for HB 187.

3:49:39 PM

MATTHEW HARVEY, Staff, Representative James Kaufman, Alaska State Legislature, Juneau, Alaska, presented the sectional analysis for HB 187. It read as follows:

[Original punctuation provided.]

Section 1:

Amends AS 37.07.020 to add a requirement for the governor to submit legislation to remove or amend statutory requirements for publications deemed to be outdated, duplicative or excessive, or that could be consolidated with other publications, and which of those could be delivered in electronic form as directed in Section 2.

Section 2:

Repeals and reenacts AS 44.99.220 requiring state agencies to use a list of publications, which is already statutorily required to be developed, to identify and highlight publications deemed to be outdated, duplicative or excessive, or that could be consolidated with other publications, or which could be delivered in electronic form. This list of publications, including highlighted publications, is required to be electronically submitted to the governor and both bodies of the legislature.

Section 3:

Provides for an immediate effective date.

CHAIR SHOWER asked for a summary of the fiscal note.

MR. HARVEY stated that the fiscal note is zero. The Office of Management and Budget stated that it would be able to accommodate the additional work with existing resources.

3:51:40 PM

SENATOR KAWASAKI observed that the immediate effective date means the current governor would start the process and whomever is governor after the election would have to comply on December 15 when the budget is released.

MR. HARVEY agreed. The bill repeals and reenacts the existing statute such that each state agency will compile a list of publications it is responsible for, highlighting certain ones. The expectation is that those reports, including the highlighted ones would be submitted to the governor for the budget process. He noted that a change in House State Affairs made the review biannual so a bill could carry through to the next year of the legislature.

3:52:50 PM

REPRESENTATIVE KAUFMAN added that the bill intentionally uses a light touch. The rewritten statute leverages the requirement that agencies maintain their list of publications, which creates a feedback loop.

SENATOR REINBOLD offered her understanding that the legislature would make the decision about whether a particular publication was needed and in what form.

REPRESENTATIVE KAUFMAN answered that's correct; the idea is to keep the legislature engaged in the assessment of whether the reductions are valid or an overreach. It is not an opportunity for the executive branch to stop doing work that is needed.

SENATOR REINBOLD asked whether the publications that one legislature deleted would still appear on the list for a subsequent legislature to see.

REPRESENTATIVE KAUFMAN clarified that a report that is required by statute would need legislative action to change the requirement to produce that report.

SENATOR COSTELLO referred to the phrase "the governor shall" and questioned why it wasn't permissive because the compulsory language assumes there are publications to be eliminated. She mentioned balance of power and questioned tasking the executive branch with highlighting publications for potential consolidation or elimination when it is the legislature that writes bills that ask for reports. She asked if there might be a way for the legislative branch to take the lead.

[3:57:34 PM](#)

REPRESENTATIVE KAUFMAN replied the idea is to get input from the people who are close to or doing the work. They will have ideas about how to do things more efficiently and can send their recommendations up through the line. The safeguard is that the legislature conducts a review. He offered his belief that there are a number of reports that have been required over time that likely aren't necessary or could be delivered electronically. Over time the biannual report will have a smaller document base.

[3:59:44 PM](#)

SENATOR KAWASAKI suggested that the report from Legislative Research Services that identified 189 statutorily required agency reports provides one way for the legislature to review the reports and direct the executive branch instead of relying on the administration to make a determination.

[4:00:34 PM](#)

MR. HARVEY says the intention is for the governor to submit a bill that is based on the highlighted list. If nothing is highlighted, the bill would be unnecessary. There is also the requirement for the list to be submitted to the legislature and public. He suggested that could give the legislature the information it needs to make its own decision about the need for certain reports.

CHAIR SHOWER encouraged the committee members to work with the sponsor if they wanted any changes.

SENATOR REINBOLD agree with Senator Kawasaki and Senator Costello that this is a legislature matter.

REPRESENTATIVE KAUFMAN said it's important to recognize that this gives voice to the agency people who prepare the reports and may have ideas about a better way to deliver the same or similar content. The proposed process creates that feedback opportunity. He opined that the opportunity for overreach is only worrisome if the legislature doesn't do its due diligence.

SENATOR KAWASAKI said he wanted to make sure that the people other than just the legislature who use the reports are taken into consideration and know what is happening. He described it as an issue of transparency.

[4:05:46 PM](#)

REPRESENTATIVE KAUFMAN said this is less about cutting reports and more about optimizing the information and delivering them in a different format.

CHAIR SHOWER said he always appreciates efficiencies.

REPRESENTATIVE KAUFMAN thanked the committee for hearing the bill.

[4:07:14 PM](#)

CHAIR SHOWER held HB 187 in committee for future consideration.

SB 207-ACCESS TO MARIJUANA CONVICTION RECORDS

[4:07:34 PM](#)

CHAIR SHOWER announced the consideration of SENATE BILL NO. 207 "An Act restricting the release of certain records of convictions; and providing for an effective date."

CHAIR SHOWER identified himself as the sponsor.

[4:07:52 PM](#)

At ease

[4:08:24 PM](#)

CHAIR SHOWER reconvened the meeting.

Speaking as sponsor, Senator Shower introduced SB 207 reading the following sponsor statement:

Senate Bill 207 would make confidential the records of individuals who have been convicted of minor marijuana crimes and were not charged with any other crimes in the same incident. These records would automatically be removed from Court View. The records would also be removed from some background checks administered by the Department of Public Safety, if requested by the convicted individual.

In 2014, Alaskans voted to legalize the cultivation, sale, and possession of marijuana for those 21 years old or older. Despite this change in state law, some Alaskans remain blocked from employment and housing due to previous marijuana possession convictions that would not be a crime today.

According to a report prepared by Legislative Research, there were more than 700 Alaskans convicted of low-level marijuana crimes between 2007 and 2017. Those convictions can make obtaining housing and gainful employment challenging.

Now that voters have legalized marijuana, this legislation would allow those previously convicted to move on with their lives, while ensuring those in the criminal justice field still have access to appropriate background information.

CHAIR SHOWER stated that he did not vote to legalize marijuana, but he worked with the original sponsor and agreed to carry SB 207 to make sure the bill is only about possession of small amounts of marijuana and that it only applies to the limited number of Alaskans who have low-level marijuana convictions on their record but would not be charged with a crime today if they had the same amount of marijuana in their possession. The hope is this bill will help that limited number of individuals move on with their lives without a criminal record.

[4:11:19 PM](#)

SENATOR COSTELLO asked if there is a definition of low-level crimes and what the penalty is for selling to minors.

CHAIR SHOWER asked Ms. Meade to respond to the first question. In response to the second question, he said the bill doesn't apply to individuals who are selling marijuana.

SENATOR COSTELLO clarified that she wanted to know what the crime is for selling to minors.

CHAIR SHOWER deferred the question to Ms. Meade.

[4:12:26 PM](#)

NANCY MEADE, General Counsel, Alaska Court System, Juneau, Alaska, said the bill uses the term low-level and suggested that the question about selling to minors would be better addressed by the executive branch.

4:13:01 PM

SENATOR KAWASAKI noted that the bill applies to persons who have not been convicted of any other criminal charges in the case. He asked if a person who is charged with a crime typically is also charged with a number of other ancillary crimes.

MS. MEADE stated that SB 207 was carefully drafted to say it only applies to those persons who were not convicted of any other charges in the case. The court will only look at the final conviction, not what could be a roster of other charges some of which could have been resolved through a plea bargain. None of that matters under SB 207; it is only the final conviction in the case.

SENATOR KAWASAKI offered his understanding that a person charged with a misdemeanor assault and possession in the same case, but only convicted of possession of less than one ounce of marijuana, would qualify to have that record concealed.

4:15:03 PM

MS. MEADE clarified that the person would qualify under Section 4 of SB 207 to have their case removed from the public face of CourtView, but the record would not be sealed or hidden. The preference is to have court records open and transparent, so those records would still be accessible at the courthouse.

CHAIR SHOWER stated that the intent is to have the marijuana charge available and searchable at the courthouse, but it would be removed from CourtView.

MS. MEADE clarified that the entire case would be removed from CourtView if the marijuana charge was the only conviction in the case. However, someone could go to a kiosk at the courthouse to search the unpublished cases. Those cases can only be viewed at the courthouse.

4:16:51 PM

CHAIR SHOWER restated that intent is to apply only to those marijuana conviction cases that are not a crime today. The idea is to help those individuals get on with their lives. He noted that a companion bill was moving through the other body and he wanted to ensure that they were reconcilable.

4:17:35 PM

SENATOR HOLLAND asked if this is limited to persons 21 years of age and older because there are no possession crimes for persons who are younger than 21 years of age.

MS. MEADE countered that there are indeed possession crimes for people under 21 years of age. Until February 2015, all possession of marijuana was a B misdemeanor. The voter initiative changed that but the only thing legalized was possession of less than one ounce or six marijuana plants by individuals older than age 21. SB 207 speaks solely to the conduct that the voters of Alaska decided should not be criminalized. Those cases would be retroactively removed from CourtView.

[4:19:18 PM](#)

CHAIR SHOWER presented the sectional analysis for SB 207. It read as follows:

[Original punctuation provided.]

Section 1: Adds a new section stating the legislative intent behind this bill.

Section 2: Amends subsection (b)(8) of AS 12.62.160 by adding criminal justice information, for marijuana possession that meet the requirements laid out in (f) of this section, to the list of exceptions for the release of criminal justice information.

Section 3: Adds a new subsection (f) to AS 12.62.160, which adds new criteria for criminal justice information that an agency cannot release. This new section prohibits release of criminal justice information for convictions under AS 11.71.060 for less than one ounce of a "schedule VIA" controlled substance, where the defendant was 21 years or older at the time of the offense, was not convicted of any other criminal charges in that same case, and has formally requested that the agency not release these records.

Section 4: Adds a new section to AS 22.35, stating that records of criminal charges or convictions that meet the requirements stated in this section, may not be published by the court system on a publicly available website. This applies to criminal justice information for convictions under AS 11.71.060 for

less than one ounce of a "schedule VIA" controlled substance, where the defendant was 21 years or older at the time of the offense, and was not convicted of any other criminal charges in that same case.

Section 5: Adds a new section to uncodified law of the State of Alaska saying that the Alaska Court System shall remove court records that meet the requirements of this bill, retroactively going back from the effective date of the bill. It also uses the language "to the extent practicable" to clarify that the court system will not be legally required to expend excessive resources or funds to ensure every single record that meets the requirements of this bill for removal from court view, is removed.

Section 6: Provides an effective date of January 1, 2023.

[4:20:50 PM](#)

CHAIR SHOWER said the fiscal note for SB 207 reflects the cost of going through the individual records and making the necessary changes. The estimated cost is about \$184,000 in FY2021 and \$121,000 in FY2024.

[4:21:37 PM](#)

CHAIR SHOWER opened public testimony on SB 207; finding none, he closed public testimony.

[4:21:56 PM](#)

CHAIR SHOWER held SB 207 in committee for future consideration.

SB 214-LIABILITY: SOCIAL MEDIA CENSORSHIP

[4:22:01 PM](#)

CHAIR SHOWER announced the consideration of SENATE BILL NO. 214 "An Act relating to civil liability for censorship of speech by a social media platform."

[4:22:22 PM](#)

SENATOR REINBOLD, speaking as sponsor, stated that SB 214 addresses social media censorship, which is a new area of law. She offered her perspective that many social media platforms are extraordinarily political yet they are not regulated as such. Furthermore, some politicians have been targeted on these platforms for their views on such things as the COVID-19

vaccine. She continued the introduction speaking to the sponsor statement that read as follow:

[Original punctuation provided.]

SB 214 may also be known as the Stop Social Media Censorship Act. This bill ensures that the legislature is opposed to censorship of online content, has a compelling interest in holding certain social media platforms to higher standards for having established a digital public square, and has an interest in helping its residents regardless of religious or political affiliations enjoy their free exercise of rights in certain semipublic forum commonly used for religious or political speech, and has an interest, and has an interest in preventing social media platforms that have substantially created a digital public square from malicious interference in state elections.

Social media platforms may not intentionally fact check, delete, or use an algorithm to disfavor, shadow ban or otherwise censor the religious or political speech of a platform user. SB 214 includes civil liability for censorship of speech by a social media platform.

[4:25:08 PM](#)

SENATOR REINBOLD summarized the February 17, 2022 legal memorandum she received from Legal Services regarding work order 32-LS1577\A. It read as follows:

The bill draft you requested is attached. Please consider the following.

1. First Amendment issues. Please be aware that the draft bill raises significant issues under the United States Constitution's First Amendment and art. I, sec. 5, of the Alaska Constitution. Because social media websites are private entities and not government actors, they are entitled to freedom of speech protections. Government regulation of a social media website's speech is therefore held to the same standard as government regulation of a private individual's speech.

The draft bill seeks to compel speech and suppress fact-checking. The U.S. Supreme Court has stated that

"[t]here is certainly some difference between compelled speech and compelled silence, but in the context of protected speech, the difference is without constitutional significance, for the First Amendment guarantees 'freedom of speech,' a term necessarily comprising the decision of both what to say and what not to say. "1 The interplay of free speech protections and internet forums such as social media is an evolving area of law. Because the draft bill requires a social media website to disseminate content with which it disagrees, and prohibits a website from speaking through fact checking, a court may, however, find the provisions in the bill unconstitutional.

2. Damages. Your request provided an injured party with a minimum of \$75,000 in statutory damages, actual damages, punitive damages, and other forms of equitable relief. The draft bill uses the \$75,000 statutory damages but does not include punitive damages to conform to the structure of AS 09.68. Please advise if this is not what you intended.

SENATOR REINBOLD highlighted that she wanted the foregoing addressed under AS 45.45 relating to trade practices, not AS 09.68

3. Jurisdiction. Although the draft bill provides an individual with a cause of action against a social media website, it is not clear that an Alaska court would have personal jurisdiction over the social media website. As a result, an Alaska court may dismiss a case brought under this statute for lack of personal jurisdiction.

4. Deceptive trade practice. Your request placed the prohibitions in AS 45.45, a chapter addressing trade practices. Because the draft regulates conduct of platforms and generally prohibits harassing behavior, and because the draft is imposing liability for conduct, I placed your request in AS 09.

5. Personal bill deadline. In order to deliver a draft before the personal bill deadline, we have expedited preparation of this bill draft. Please be aware that there may be additional legal issues raised by this draft that are not discussed in this memo.

4:27:18 PM

SENATOR KAWASAKI requested a copy of the memo.

CHAIR SHOWER replied it would be added to the record.

4:27:28 PM

SENATOR REINBOLD presented the sectional analysis for SB 214.

Section 1 adds the short title, Stop Social Media Censorship Act, to the uncodified law of the State of Alaska

Section 2 amends the uncodified law of the State of Alaska by adding legislative findings.

The legislature finds that the state

(1) is opposed to censorship of online content, unless the content is harmful to minors or promotes human trafficking;

(2) has a compelling interest in holding certain social media platforms to higher standards for having substantially created a digital public square;

(3) has an interest in helping its residents, regardless of religious or political affiliation, enjoy their free exercise of rights in certain semipublic forums commonly used for religious and political speech; and

(4) has an interest in preventing social media platforms that have substantially created a digital public square from malicious interference in state elections.

Section 3 amends AS 09.68 by adding a new section regarding civil liability for censorship of speech by a social media platform.

- (a) prohibits censoring political speech of a platform user
- (b) authorizes civil action for violations
- (c) allows the platform to mitigate damages by restoring the platform user's speech
- (d) prohibits a court from using the alleged hate speech as justification for a platform to delete or censor the user's religious or political speech
- (e) allows the attorney general to bring civil action against a social media platform on behalf of the user
- (f) outlines that deletion or censorship of a user's speech does not apply when the speech

- (1) calls for acts of violence.
 - (2) calls for self-harm
 - (3) is pornographic
 - (4) results from operational error
 - (5) results from a court order
 - (6) is inauthentic or involves impersonation
 - (7) entices criminal conduct
 - (8) harms minors
 - (9) bullies minors
- (g) prohibits bullying or harassing behavior on a social media platform
- (h) provides definitions for
- (1) algorithm
 - (2) hate speech
 - (3) platform user
 - (4) political speech
 - (5) pornographic
 - (6) religious
 - (7) shadow ban and
 - (8) social media platform

4:31:36 PM

CHAIR SHOWER noted that the fiscal note for SB 214 is zero.

4:32:00 PM

SENATOR HOLLAND asked where the definition of "religious" came from and whether the protections are limited to

a set of unproven faith-based assumptions or assertions that attempt to answer questions relating to how the world was created, what constitutes right and wrong human action, and what happens to humans after death

He observed that if he were to post about his religious exemption, he didn't believe it would fall under that definition and his speech could be censored. He suggested that "relating to or manifesting faithful devotion to an acknowledged ultimate reality of deity" would be a more appropriate and all-encompassing definition of religious.

SENATOR REINBOLD agreed and said she would support amending the definition. She suggested that Noah Klein, who drafted the bill, tell the committee where the definition in the bill came from.

4:33:36 PM

NOAH KLEIN, Legislative Counsel, Legal Services, Division of Legal and Research Services, Legislative Affairs Agency, Alaska State Legislature, Juneau, Alaska, stated that Legal Services drafts bills according to intent and the direction they receive from the bill sponsor. As such, he could answer questions about what the definition means or how it would be applied, but the bill was drafted according to the direction given.

SENATOR HOLLAND stated that he might offer an amendment.

SENATOR COSTELLO referenced Section 3 and wondered whether all speech could be protected, not just religious or political speech. She suggested amending the language on page 2 line 7 to read, "...or otherwise censor speech of a platform user based on religious or political speech, race, sex, age, or identity choice."

She said she appreciates the bill because she believes that free speech should be protected and that people should not be treated improperly because of their views.

[4:35:39 PM](#)

SENATOR REINBOLD maintained that she did not give Legal Services a specific definition for religious and she much prefers the one Senator Holland suggested. She also agreed with Senator Costello's point, further maintaining that she did put parameters in to target religion and politics.

[4:37:19 PM](#)

CHAIR SHOWER turned to invited testimony on SB 214.

[4:37:25 PM](#)

CAMERON SHOLTY, Director of Government Relations, Heartland Institute, Illinois, testified by invitation in support of SB 214. He thanked the committee for hearing the bill and Senator Reinbold for introducing it. He stated that Heartland Institute is a 38-year-old independent, national, nonprofit organization whose mission is to discover, develop, and promote free-market solutions to social and economic problems. Heartland focuses on providing national, state, and local elected officials with reliable and timely research and analysis on important policy issues.

MR. SHOLTY stated that 97 percent of social media traffic flows through just three firms, thereby making this the de facto public square where political and religious issues are shared and debated. He acknowledged that some of the debate becomes

ugly but pointed out that it is still lawful and should be protected. He said free speech rights are not subject to corporate capture, although there are numerous examples where conservative speech in particular has been subject to the whims of big tech. He cited the example of Facebook stating that a New York Times article about an ongoing investigation into Hunter Biden was eligible to be fact-checked by third-party partners and that in the meantime distribution on the platform would be reduced. He maintained that the sole issue there is that government and big tech collude to limit speech in the de facto public square.

MR. SHOLTY offered his view that there were competing interests in the Commerce Clause and the First Amendment. Regarding the Commerce Clause, he said Section 230 of the 1996 Communication Decency Act allows states like Alaska to weigh in the way SB 214 does to forbid objectionable content. And then there are the First Amendment claims big tech corporations have used to prevent third-party content. He stressed that Section 230 requires a very narrow reading and "otherwise objectionable" should not be the whim of Silicon Valley.

[4:42:14 PM](#)

SENATOR COSTELLO asked if he would recommend addressing this issue in uncodified law or where the sponsor believes is appropriate under [AS 45.45] relating to trade practices.

MR. SHOLTY replied this is an issue of consumer protection and the findings tend to lean into the concept of commerce and carriage, so it may be best in uncodified law. That being said, he suggested discussing the question with legislative counsel.

CHAIR SENATOR thanked Mr. Sholty and said the committee may ask him to return for a subsequent hearing.

[4:45:34 PM](#)

CHAIR SHOWER opened public testimony on SB 214; finding none, he closed public testimony.

He asked Senator Reinbold if she had any closing comments.

SENATOR REINBOLD urged the members to look at the written testimony from the Heartland Institute and expressed her desire to invite Mr. Sholty if the committee was sufficiently interested.

[4:46:29 PM](#)

CHAIR SHOWER held SB 214 in committee.

HB 123-STATE RECOGNITION OF TRIBES

[4:47:39 PM](#)

CHAIR SHOWER announced the consideration of HOUSE BILL NO. 123 "An Act providing for state recognition of federally recognized tribes; and providing for an effective date."

He asked Ms. Wolff to provide her testimony.

[4:48:23 PM](#)

LAURA WOLFF, Assistant Attorney General, Opinions, Appeals, and Ethics Section, Civil Division, Department of Law, Anchorage, Alaska, stated that DOL was asked to assess whether or not the text of HB 123 in any way impacts the powers or authorities of tribes or the state. The conclusion was that the bill does not in any way change or confer new rights or authority. She offered to answer any questions about the legal memorandum regarding HB 123 that the department sent to the committee.

[4:49:45 PM](#)

CHAIR SHOWER segued to the topic of St. Patrick's Day. He advised that his office had contacted the President of the Irish Senate who was now online to extend his greetings in recognition and honor of St. Patrick's Day.

The President of the Irish Senate extended his greetings, his appreciation that people were celebrating St. Patrick's Day, and his hope that some Alaskans would travel to Ireland either this year for the 100th anniversary of the Irish Senate or next year in celebration of the Notre Dame Navy game.

SENATOR COSTELLO stated that it is an honor to be one of the cochairs of the Friends of Ireland caucus in the Alaska legislature. She congratulated him for establishing similar caucuses in all 50 states.

The Irish Senate President expressed his gratitude and noted that the Irish Parliament had two bars, both of which were busy that day.

[4:52:38 PM](#)

CHAIR SHOWER returned attention to HB 123.

[4:53:15 PM](#)

BETTY JO MOORE, representing self, Sitka, Alaska, stated that she is a tribal citizen testifying in opposition to HB 123. She said paragraphs (1), (2), and (3) in Section 3 regarding jurisdiction are all very confusing. She related that Congress enacted Public Law (PL) 280 in 1953 and Alaska was made a mandatory PL 280 state in 1958. That law transferred jurisdiction over all criminal matters committed by or against Indians in Indian Country from the federal government to the state. In Alaska that means everywhere other than Metlakatla Island.

MS. MOORE cited the following:

- ~ A May 29, 2019, Alaska Public Media report about Native leaders finding it difficult to qualify for federal resources because of legal confusion between federal Indian Country laws and the Alaska Native Claims Settlement Act (ANCSA).
- ~ An October 17, 2019 press release when Senator Murkowski said the Alaska Tribal Public Safety Empowerment Act recognizes the specific jurisdictional complexities that tribes in Alaska face. Ms. Moore questioned what the specific jurisdictional complexities were.
- ~ An August 25, 2013 Anchorage Daily News (ADN) article reported that the State of Alaska intervened in a civil case from a small tribal court in the Village of [Minto]. Then Attorney General Michael Geraghty reported the state intervened on Mr. Park's side to protect his constitutional rights.

MS. MOORE said the state attorney general ensures protection of all Alaskans' state constitutional rights; the U.S. attorney general ensures protection of all Alaskans' U.S. constitutional rights; and the U.S. and state attorneys general have jurisdiction over criminal matters in Alaska and protection of Alaskans' constitutional rights.

MS. MOORE offered her perspective as a former tribal judge that not all tribal citizen's U.S. constitutional rights are protected within tribal government. She said there is no comity between tribal courts and State of Alaska jurisdiction and her belief is comity should be nation-to-nation before it is sanctioned for a state.

MS. MOORE opined that HB 123 is not the answer to improving lives for all Alaskans. She asked whether tribal governments and tribal courts were properly funded by the federal government and how much it would cost the state to address ongoing issues surrounding Alaska Native people and Alaska jurisdiction, should

HB 123 pass. She urged the committee not to pass HB 123 as written.

4:58:37 PM

JULIE KITKA, President, Alaska Federation of Natives, Anchorage, Alaska, described the documents and information she had provided to the committee during or after the five previous hearings on HB 123.

- ~ A document about Alaska's Unique Forms of Self Determination and Tribal Self Governance that was prepared in an effort to provide examples of what is different in Alaska compared to the rest of the United States.
- ~ A summary briefing for the Senate State Affairs Committee that reiterates that the implication of state recognition of tribes in Alaska is different because Alaska's tribes already have federal recognition status. Thus, the effect of HB 123 is primarily one of respect. It will start to build trust and open the potential for cooperation and coordination on the many issues affecting all Alaskans.

MS. KITKA emphasized that HB 123 does not affect the federal trust responsibility; it does not affect federal tribal recognition; it does not affect the sovereignty of federally recognized tribes; it does not impact the federal recognition process; and it will have no bearing on state taxation of Alaska Native lands.

MS. KITKA stated that as she testified before, state recognition is a matter of state law and it varies both in terms of the mechanism and the scope. She noted that the memo that was sent to the committee provided examples of the variations in state recognition of tribes. She recapped that the three largest state recognized tribes in the U.S. are the Lumbee Tribe of North Carolina, the Miami Nation of Indiana, and the United Houma Nation of Louisiana. The memo also described what a state recognized tribe is and that it's distinct from a federally recognized tribe.

MS. KITKA discussed the reason that some Lower 48 tribes sought state recognition versus the federal recognition process. The current research indicates that more than 100 applications for federal recognition are pending in the Office for Tribal Recognition within the U.S. Department of Interior. Very few applications are processed every year and only one or two have been processed in recent years. Because the federal process is

so slow, tribes in Lower 48 states have opted for recognition through the state process.

She highlighted that Alaska is different because all tribes in this state are already federally recognized. Now it is just a matter of the State of Alaska recognizing what is already a fact.

MS. KITKA concluded her testimony saying that HB 123 is not a jurisdictional bill. Jurisdiction and recognition are not the same. She reminded the members that the issue of Indian Country was determined by the Venetie case and passing HB 123 would not overturn that settled law or any other court case.

5:03:02 PM

CHAIR SHOWER asked the committee to keep the questions short in the interest of time.

SENATOR REINBOLD asked: 1) if there really are 229 sovereign tribes in Alaska and 2) whether a tribal member is recognized by bloodline or if there were other ways to become a tribal member.

5:04:00 PM

MS. KITKA answered that a unique aspect of Indian law is that decisions about tribal membership are considered an internal domestic matter and the sole prerogative of the tribe. The qualifications and requirements differ from tribe to tribe. Some may have blood quantum while others may be residency based.

SENATOR REINBOLD expressed interest in seeing the specific requirements for the tribes, even if it was just a handful.

MS. MOORE stated that ANCSA defines Native as a U.S. citizen who is 1/4 degree or more Alaska Indian including Eskimos, Aleuts, and Tsimshian Indians not enrolled in the Metlakatla Indian community. She said there is no consistent definition among the 229 tribes in Alaska.

SENATOR REINBOLD asked Ms. Kitka if she agreed with the ANCSA definition.

MS. KITKA answered no; that definition is part of the land claims settlement to determine who qualified as a shareholder in a Native corporation established as part of ANCSA. Tribal membership is different than ANCSA enrolled shareholders. She restated that federal Indian law stipulates that tribes may set their own membership requirements. As such, some tribes have

members who are dual citizens of Alaska and Canada and some membership is based on descendency. Determination of membership is a domestic issue for each tribe. There are no overarching rules.

[5:09:17 PM](#)

SENATOR REINBOLD responded that not basing tribal membership on blood quantum "opens a much broader issue in my mind."

CHAIR SHOWER asked members to contact Ms. Kitka or Ms. Moore directly if they had questions. Thereafter, the committee would hold another hearing to ensure those questions and the answers were part of the record.

[5:10:44 PM](#)

CHAIR SHOWER held HB 123 for future consideration.

SB 129-ELECTION PAMPHLET INFORMATION RE: JUDGES

[5:10:53 PM](#)

CHAIR SHOWER announced the consideration of SENATE BILL NO. 129 "An Act relating to information on judicial officers provided in election pamphlets."

[CSSB 129(JUD) was before the committee.]

[5:11:08 PM](#)

SENATOR ROBERT MEYERS, Alaska State Legislature, Juneau, Alaska, sponsor of SB 129, stated that this legislation will give voters additional information on judges standing for retention. Because judges tend to stay out of the public eye and generally cannot campaign, voters often lack information when they vote on judicial retentions. SB 129 proposes to publish in the election pamphlet the information the Alaska Judicial Council already collects. The intent is that this will increase voter turnout and trust in the system.

[5:12:19 PM](#)

THERESA WOLDSTAD, Staff, Senator Robert Myers, Alaska State Legislature, Juneau, Alaska, delivered a PowerPoint to introduce SB 129. She displayed slide 2 related to the judicial merit selection retention system:

Alaska established a three-part judicial merit selection and retention system.

1. Alaska Judicial Council screens and nominates judicial applicants based on the candidate's moral character, professional competence, and legal experience.
2. Alaska governor appoints from the list provided by the Alaska Judicial Council.
3. Alaska state voters determine whether a judicial officer will remain on the bench during retention elections.

MS. WOLDSTAD stated that CSSB 129 focuses on the third phase of the system when voters decide whether judges should be retained in office. The constitutional framers belief was that the judiciary must maintain accountability to the electorate.

MS. WOLDSTAD displayed a sample of the two part election pamphlet depicted on slide 4. The information on page one is submitted by the judicial officer seeking retention. Page 2 contains the Alaska Judicial Council evaluation of the judge standing for retention.

MS. WOLDSTAD reviewed the Alaska Judicial Council recommendations on slide 3:

- The Alaska Judicial Council conducts extensive performance evaluations, interviews, and public hearings.
 - Surveys assess judicial integrity, temperament, diligence, impartiality, legal ability, and administrative skills
- Based upon their research the council will decide if they will recommend a judicial officer's retention to the public.
- The Judicial Council's recommendation is published in the Alaska Official Election Pamphlet.

MS. WOLDSTAD directed attention to the table on slide 5 that summarizes information the Alaska Judicial Council compiled from the Judicial Performance Evaluation it conducted. She noted that the Alaska Judicial Council recommendation indicates whether or not the judge should be retained. That information is on the website.

5:14:04 PM

MS. WOLDSTAD reviewed the table on slide 6, Alaska Judicial Council Recommendations and Retention Votes. She highlighted that Alaska judges standing for retention must receive a simple majority of the votes cast during a retention election. She noted the dichotomy in the sample between the Judicial Council recommendation and the retention vote. [In the sample, the Judicial Council recommended a yes vote for just one of 13 judges and the voters returned eight yes votes for those 13 judges.] She offered her perspective that it sometimes takes two cycles before the judges are voted out.

5:14:31 PM

MS. WOLDSTAD read the goals of the bill shown on slide 7:

- Success of the system is based upon providing the electorate critical information to make informed decisions regarding judicial retention.
- This legislation will add additional information already collected by the Alaska Judicial Council to the Alaska Official Election Pamphlet.
- Information shall be provided except when required by law to be kept confidential.

MS. WOLDSTAD skipped to slide 9 that recounts the information an individual seeking retention must provide:

Individual seeking retention in office as a justice or judge may file with the Lieutenant Governor the following information; not exceeding 300 words.

- A photograph
- Information regarding the residency of the judge.
- Information regarding the military service of the judge.
- Information regarding the professional activities of the justice or judge, including public outreach and administrative activities.
- Any additional information that the justice or judge would like to publish to support the justice's or judge's candidacy.

5:15:20 PM

MS. WOLDSTAD displayed slide 10 that lists the information the Judicial Council must provide on the election pamphlet for a superior court or district court judge subject to retention.

The Judicial Council shall provide the following information.

- Statement written by the judge that describes the professional philosophy.
- Description of the judicial, legal, or other education of the judge.
- Description of business experience and professional positions held in the preceding 10 years.
- List of service organizations with which the judge is affiliated.
- If applicable, rating of judge by law enforcement officers, attorneys, court employees, and jurors.
- Number of decisions by the judge that were reviewed and disposed of by a written decision of an appellate court and the percentage of issues in those decisions that were affirmed by the appellate court.
- Description of any public disciplinary proceedings against the judge.
- Self-assessment by the judge that evaluates the judge's judicial performance.

MS. WOLDSTAD reviewed slide 11 that lists the information the Judicial Council must provide on the election pamphlet for a Supreme Court justice or court of appeals judge subject to retention.

Judicial Council shall provide the following information.

- Statement written by the judge that describes the professional philosophy.
- Description of the judicial, legal, or other education of the judge.
- Description of business experience and professional positions held in the preceding 10 years.
- List of service organizations with which the judge is affiliated.
- If applicable, rating of judge by law enforcement officers, attorneys, court employees, and jurors.
- Description of any public disciplinary proceedings against the judge.

- Self-assessment that evaluates the judge's judicial performance.

5:17:08 PM

MS. WOLDSTAD reviewed slide 12 that lists the information the Judicial Council must provide on the election pamphlet for a justice of judge standing for retention for the first time.

Judicial Council shall provide the following information.

- Previous political and governmental positions held by the justice or judge, including any political office held.
- Justice's or judge's primary practice areas before appointment, including the approximate percentage of the justice's or judge's pre-appointment career was spent as a trial lawyer.
- Types of clients the justice or judge represented before appointment.

5:17:44 PM

MS. WOLDSTAD paraphrased slide 13:

Expansion of Word Limits slide 13

- Establishes a word limit of 300 for information provided by an individual seeking retention as a justice or judge.
- Establishes a 1,200-word limit for information provided by the Alaska Judicial Council.
 - Statement describing professional philosophy by the justice or judge is not to exceed 150 words.
 - Self-assessment by the justice or judge to not exceed 250 words.

5:18:12 PM

SENATOR COSTELLO asked whether judges are required to file their personal financial information with the Alaska Public Offices Commission (APOC).

SENATOR MEYER answered yes; judges have basically the same APOC requirements as elected officials. The difference is that information about an elected official is publicly available on the APOC website whereas that information must be specifically requested for each judge.

[5:18:59 PM](#)

CHAIR SHOWER opened public testimony on SB 129; finding none, he closed public testimony on SB 129.

[5:19:46 PM](#)

CHAIR SHOWER held SB 129 in committee for future consideration.

[5:19:51 PM](#)

There being no further business to come before the committee, Chair Shower adjourned the Senate State Affairs Standing Committee meeting at 5:19 p.m.